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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

NO. 74-1626

PEGGY BURTON,

Petitioner,

vs.

CASCADE SCHOOL DISTRICT UNION HIGH SCHOOL NO. 5; LEONARD FEDERICO, individually and as principal of Cascade Union High School No. 5; FRED ARCHER, individually and as Superintendent of Cascade School District Union High School No. 5; LeROY McGILL, ERVIN KREJER, HERMAN HENRIKSON, MERLE CRANE and CLARENCE GOFFIN, individually and as Board of Cascade School District Union High School No. 5,

Respondents.

RESPONSE TO

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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The matter of the reinstatement of Petitioner as a non-tenured teacher in Cascade School District Union High School No. 5 was fully and carefully considered by the Honorable Gus Solomon, Senior Judge of the United States District Court for the District of Oregon.

The matter was again carefully considered by the United States Court of Appeals Judges for the Ninth Circuit; and, in both instances the matter of Petitioner's reinstatement was denied.

As appears from the record, the communities encompassed in the boundaries of the District are all rural and small in size with a purely agricultural atmosphere.

In view of this situation, the Honorable Judge Solomon felt that this was not the type of case that warranted

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reinstatement; and, therefore, awarded Petitioner her full salary together with one-half of the salary for the next year.

Under Oregon law Petitioner, as a non-tenured teacher, could not necessarily expect that her contract with the District would be renewed for the following year. See, Oregon Revised Statutes 342.513:

> "**Renewal or nonrenewal of contracts for following year.**
>
> (1) Each district school board shall give written notice by March 15 of each year to all teachers and administrators in its employ who are not under tenure or who are not eligible for a three-year contract under ORS 342.508 the renewal or nonrenewal of the contract for the following school year."

Respondents contend that although the Courts do have a right of reinstatement without question, that this is an extra-ordinary remedy; and, generally re-instatement involves situations of racial discrimination and where there

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apparently have been reprisals against a teacher for the legal exercise of the right of free expression. And, in all of the cases, all of the facts and circumstances should be fully considered. See, Franklin vs. County School Board, 360 Fed. 2d 325 (4th Cir. 1966); Pred vs. Board of Public Instruction, 415 Fed. 2d 851, 856, 859 (5th Cir. 1969); Stewart vs. Pearce, 484 Fed. 2d 1030 (9th Cir. 1973).

The Respondents submit that the facts and circumstances in this case do not warrant reinstatement of Petitioner as a teacher in their small District.

In this case the Board did not act maliciously, but acted under a Statute of the State of Oregon which had been in effect for more than twenty-five years which provided that a teacher may be dismissed for immorality. This

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Statute was held unconstitutional as being too vague by Judge Solomon; but the decision was made subsequent to the action by the School Board, and therefore it does not appear there would be any maliciousness or arbitrary action on the part of the Board in dismissing Petitioner.

Prior to her dismissal, Petitioner was granted a full hearing before the Board, and at the hearing were parents of children in the District and members of the staff as well as the full membership of the Board.

The matter of her deprivation of property in connection with the question of reinstatement has to be looked at in connection with the Order of the Honorable Judge Solomon in which the record of Petitioner's dismissal was expunged and is therefore not a matter

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of public record as far as the school records are concerned.

In view of all the circumstances in this case together with the fact that the Petitioner has been awarded compensatory damages, Respondents respectfully submit that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

DeARMOND, SHERMAN & BRYAN

by

Robert W. DeArmond
of attorneys for
Respondents

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